



MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel
Chair

Steven Rosen
Vice Chair

August 29, 2019

Waiver 19-07-017

Pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, a public employee must not be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver of the prohibition. Section 19A-8(b)(3) states that the Ethics Commission may grant a waiver of this prohibition if the Commission concludes that the outside employment will not be likely to create an actual conflict of interest.

Rita Nzuwah is a Social Worker III with the Aging and Disability Services (ADS) Division, Adult Protective and Case Management Services (APCMS) Section at the Montgomery County Department of Health and Human Services (DHHS). She would like to engage in outside employment as a Social Worker with Arcola Health and Rehabilitation/Sava Senior Care (Arcola), an entity that has a contract with DHHS. As the proposed outside employer contracts with DHHS, the outside employment is barred pursuant to 19A-12(b)(1)(B), unless the Ethics Commission issues a waiver pursuant to Section 19A-8(b)(3).

At APCMS, Ms. Nzuwah serves as an adult protective services investigator. She conducts investigations regarding allegations of abuse, neglect, financial exploitation or self-neglect of vulnerable adults living in community settings (home, hospitals, assisted living and group home settings). She also makes onsite visits to assess risk of vulnerable adults, identifies the service needs of vulnerable adults and determines the level of intervention needed, to include voluntary services or court ordered protective services. She serves seniors and adults with disabilities in Montgomery County who have been determined as vulnerable (an adult who lacks the physical or mental capacity to provide for his/her daily needs). Ms. Nzuwah's unit at APCMS does not initiate or start services with clients already living in skilled nursing or rehab facilities such as Arcola. These investigations are handled by the Office of Healthcare Quality. Her unit does not investigate or work with clients already living at Arcola or another nursing facilities. Ms. Nzuwah has no contract monitoring or procurement responsibilities in her County role.

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In her role at Arcola, she would be a PRN contract social worker. She would provide social work services for disabled adults, frail elderly, mentally ill, chronically ill, terminally ill and developmentally disabled adults aged eighteen and over in long-term care and skilled rehab settings. Additionally, she would make psychosocial assessments, mental capacity evaluations, develop and initiate individualized plans of care, execute emergency psychiatric petitions, and provide case management services. She would be serving seniors, adults with disabilities, and adults requiring either short-term or long-term rehabilitation therapy.

Referring County clients to care providers is a small part of Ms. Nzuwah's official role, and Arcola is such a provider. But Ms. Nzuwah represents that she can effectively carry out her County responsibilities without referring any County clients to Arcola. If Ms. Nzuwah is working with a client in her official County capacity and the client requests to be transferred to an Arcola facility, Ms. Nzuwah will request that a County colleague handle the transfer. As there are approximately thirty other County employees within her section who make such referrals, losing referrals from her will not cause any material interference with Arcola's ability to obtain referrals.

While working at Arcola, if a client who is known to receive services from ADS or is a referral from ADS is encountered, Ms. Nzuwah represents that other Arcola staff can work with that client. ADS does occasionally issue contracts to Arcola for clients to be admitted to the facility for long or short-term stays when the appropriate level of care cannot be identified in the community and the client does not have insurance eligibility for payment of the facility stay. These contracts are issued at an occurrence of about 3-5 issued contracts per calendar year (although there was only one such occurrence in FY19).

Ms. Nzuwah has no contract execution functions in her role with Arcola with regards to any contracts between DHHS and Arcola, and her position at Arcola is not funded by a County contract.

Pursuant to § 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of § 19A-12(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. Upon a review of the request and the commitments of Ms. Nzuwah and the Department's concurrence in and support for the waiver request, the Commission finds that the proposed employment is not likely to create an actual conflict of interest. Pursuant to the standard of § 19A-8(b)(3), the Commission grants the waiver of the prohibition of § 19A-12(b).

In reaching this decision, the Commission has relied upon the facts presented by Ms. Nzuwah in her request for a waiver. The Commission notes that while 19A-12(b)'s prohibition is waived, the other provisions of the ethics law are not, including those prohibiting an employee from working on official matters relating to the outside employer. The waiver approval is conditioned on the facts on which the waiver is based remaining unchanged. It is also

conditioned on Ms. Nzuwah not making referrals as a County employee to the outside business or soliciting other County employees to make such referrals. If the number of referrals to Arcola ever increases beyond 3-5 contracts per year, this waiver will be no longer be effective and Ms. Nzuwah must seek a new waiver from the Ethics Commission in connection with this outside employment.

For the Commission:



Rahul K. Goel, Chair